IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Crl.MC.No. 3364 of 2007()

SC.172/2002 of II ADDL.ASSISTANT SESSIONS COURT, ERNAKULAM

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PETITIONER: PETITIONER

KABEER, S/O. MOIDU, AGED 34,
VALIYAKATHU HOUSE, NEAR KECHERY POST OFFICE,
PATTIKKARA DESOM, ERANELLOOR VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)

RESPONDENTS: RESPONDENT

STATE OF KERALA, (REP. BY CIRCLE
INSPECTOR OF POLICE, ERNAKULAM TOWN NORTH POLICE
STATION - CR.86/98 OF ERNAKULAM TOWN NORTH POLICE
STATION), REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3364 of 2007

Dated this the 6th day of November 2007

O R D E R

The petitioner, along with the co-accused, faces allegations for offences punishable inter alia under Section 386 I.P.C. The petitioner was not available for trial. The case against him was split up. The co-accused, who faced trial, were found not guilty and acquitted. The petitioner has now come before this court with a prayer that the surviving prosecution against him may be quashed.

2. What is the reason? The short reason urged is that the co-accused have already been tried and acquitted and there is only bleak prospects of the prosecution against the petitioner ending in conviction. In these circumstances, it is prayed that the proceedings against the petitioner may be quashed. The decision in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] stares at the petitioner. The mere fact that the co-accused have secured an acquittal on the basis of the evidence tendered against them in such prosecution is no reason at all for an absconding co-accused to claim any benefit or advantage on the basis of such acquittal. Moreover, a perusal of the said judgment

of acquittal which is produced as Annexure A clearly shows that the principal witness/victim/CW2 who was allegedly abducted was not available for trial at that stage before the learned Additional Assistant Sessions Judge. The advantage or benefit of the non-examination of that vital witness which was conceded to the co-accused cannot obviously be claimed by the petitioner herein who did not face trial along with the co-accused. I am, in these circumstances, satisfied that the prayer of the petitioner cannot be accepted. The same deserves to be rejected.

3. The learned counsel for the petitioner then submits that a warrant of arrest issued by the learned Magistrate is chasing the petitioner. According to the petitioner, his absence earlier was not wilful or deliberate. The petitioner is willing to surrender before the learned Additional Assistant Sessions Judge and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Judge on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Judge to release the petitioner on bail when he appears and applies for bail.

4. It is for the petitioner to appear before the learned Judge and explain to the learned Judge, the circumstances under which he could not earlier appear before the learned Judge. I find absolutely no reason to assume that the learned Judge would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Judge and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007